

TITLE 15. CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

NOTICE IS HEREBY GIVEN that the California Department of Corrections and Rehabilitation (CDCR), Division of Juvenile Justice (DJJ) adopted Sections 4034.0, 4034.1, 4034.2, 4034.3, and 4034.4 and repealed Sections 4036.0 and 4040.0 of Title 15, Division 4, Article 3, of the California Code of Regulations (CCR) pertaining to force used by Correctional Peace Officers as an emergency action that became effective on August 11, 2006. The DJJ proposes to continue the adopted regulations and to complete the regulatory process by submission of a Certificate of Compliance no later than January 17, 2007.

Notice is also given that any interested person may present statements or arguments in writing relevant to the proposed action at a hearing to be held at 12:00 p.m. on Monday, January 8, 2007 at the Division of Juvenile Justice, 4241 Williamsborough Drive, Suite 216, Sacramento, California, 95823. Written statements will be accepted until 5:00 p.m. January 8, 2007.

After considering all timely and relevant comments received, the DJJ, upon its own motion, may adopt the proposal substantially as set forth above without further notice.

If the regulation text is modified by the DJJ and the changes are sufficiently related to the originally proposed action, the DJJ will make the modified text available (with the changes clearly indicated) to the public for at least 15 days prior to adopting the amended regulations. The DJJ will accept written comments pertaining to only the modified text during the 15-day period prior to adoption of the revised text. Requests for copies of any modified regulation text should be directed to the contact person indicated in this notice.

AUTHORITY

Welfare and Institutions (W & I) Code Section 1712 assigns responsibility to the CDCR, DJJ to make and enforce all rules appropriate to the proper accomplishment of the functions of the DJJ. Authority cited: Sections 1712 and 1752, W & I Code; Section 830.5, California Penal Code.

REFERENCE

This action is proposed to implement, interpret, and/or make specific Section 1752 of the W & I Code; Sections 147, 149, 830.5, 835, and 843 of the California Penal Code; Article I, Section 17, of the California Constitution; and Bill of Rights, Amendment VIII, United States Constitution.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 1004 of the W & I Code establishes that the DJJ shall have charge of the persons committed to or confined in DDJ institutions and shall provide for their care, supervision, education, training, employment, discipline, and government. The DJJ shall exercise its powers toward the correction of their faults, the development of their characters, and the promotion of their welfare.

Section 1712 (b) of the W & I Code states that commencing July 1, 2005, the Secretary is authorized to make and enforce all rules appropriate to the proper accomplishment of the functions of the DJJ, Division of Juvenile Programs, and Division of Juvenile Parole Operations.

In November 2004, the Superior Court of California in *Farrell v. Allen* (now Tilton), county of Alameda, Case No. RG 03079344, issued orders in a Consent Decree under which the DJJ agreed to develop and implement a comprehensive remedial plan that would reduce violence and the need for the use of force within the DJJ. In addition to this provision, the Consent Decree required the DJJ to implement, by December 15, 2004, new policies and procedures to eliminate use of room extractions and chemical agents.

The DJJ issued a Temporary Departmental Order (TDO # 05-36) effective December 1, 2005 that generally incorporated the elements the parties had agreed would be included in written policy.

Current DJJ regulations pertaining to the use of force do not sufficiently provide employees with clear guidelines and are not consistent with policies the DJJ has implemented in an effort to comply with the court order specified in the *Farrell vs. Allen* Consent Decree.

Existing Section 4040.0, Article 3, Title 15 of the California Code of Regulations (CCR) pertains to the use of restraining devices on wards for security purposes in parole and institutional operations. Subsection (b) states that only reasonable and necessary force shall be used but does not define what is meant by “reasonable” or “necessary”. Therefore, the DJJ believes Section 4040.0 should be repealed and proposes to adopt new regulations that are consistent with the orders issued by the court.

Section 298.1 (c) (1) (A) of the Penal Code defines the term “use of reasonable force” as the force that an objective, trained and competent correctional employee, faced with similar facts and circumstances, would consider necessary and reasonable to gain compliance. Although Section 298.1 pertains to the refusal or failure to give a blood specimen, saliva sample, or thumb or palm print impression which are mandated by law, the DJJ believes this is a standard definition used throughout law enforcement as well as the Commission on Peace Officer Standards and Training and proposes to adopt the definition as a standard definition that shall apply to the use of force under all circumstances.

The proposed regulations are intended to specify and identify the circumstances as well as the amount of force that an objective, trained, and competent Correctional Peace Officer, faced with similar facts and circumstances, would consider necessary and reasonable, as prescribed by the Commission on Peace Officer Standards and Training, to subdue an attacker, overcome resistance, effect custody, or gain compliance with a lawful order. The proposed regulations are also intended to establish supervision, monitoring, and evaluation of force deployment.

The specific purpose of adopting Section 4034.0 is to establish a Use of Force Policy under which the DJJ shall operate. The proposed regulations specify force shall be used only when reasonably necessary to subdue an attacker, overcome resistance, effect custody, or to gain compliance with a lawful order. At no time shall any DJJ staff use force against a ward for punishment, retaliation, or discipline.

The specific purpose of adopting Section 4034.1 is to define the terms “reasonable force”, “unnecessary force”, “excessive force”, “non-deadly force”, “great bodily injury” and “deadly force” as they apply to force used by DJJ staff to subdue an attacker, overcome resistance, effect custody, or gain compliance with a lawful order.

The specific purpose of adopting Section 4034.2 is to establish “use of force options”, and the proper use thereof, available to DJJ staff. The proposed regulations define use of force options as the choices available to an employee when selecting a reasonable force option. The choices include but are not limited to: dialogue or verbal persuasion, chemical agents, physical strengths and holds, mechanical restraints, less-lethal weapons, and firearms. Employees may use reasonable force as required in the performance of their duties, but unnecessary or excessive force shall not be used. If staff, at any point, determines the situation can be resolved without any further use of force, staff shall terminate the use of force. Section 1700 of the W & I Code establishes that community restoration, victim restoration, and offender training and treatment shall be substituted for retributive punishment and shall be directed toward the correction and rehabilitation of young persons who have committed public offenses. It shall be the policy of the DJJ to accomplish the educational, treatment and supervision functions with minimal reliance on the use of force.

The specific purpose of adopting Section 4034.3 is to establish a reporting and monitoring process pertaining to any force used by Correctional Peace Officers or witnessed by staff employed by the DJJ. The proposed regulations require an employee who uses or observes force greater than verbal persuasion to document the incident by preparing and submitting the appropriate forms to his or her on-duty supervisor. The proposed regulation also establishes an Institutional Force Review Committee and a Regional Parole Force Review Committee that shall be tasked with evaluating and monitoring all use-of-force incidents to determine their appropriateness.

The purpose of adopting Section 4034.4 is to establish the use of mechanical restraints, and under what circumstances and how they shall or shall not be used. The proposed

regulations permit the use of divisionally approved mechanical restraints under certain circumstances when used in a manner consistent with the manufacturer's instructions and DJJ policies and procedures.

The DJJ is also proposing to repeal existing Section 4036 pertaining to training requirements prior to the use of non-lethal chemical agents. Training of Correctional Peace Officers is accomplished through the Commission on Peace Officer Standards and Training. Use of chemical agents will be addressed through the regular rule making process at a later time.

These regulatory amendments are necessary in order for the DJJ to comply with the courts' order. Providing clear guidelines to DJJ staff in the use of force is critical. Failure by the DJJ to make specific "use of force" regulations increases the risk of violence and will continue to result in serious injuries and/or even the death of wards, parolees, and/or staff.

LOCAL MANDATES

The DJJ has determined that the proposed action imposes no mandate upon local agencies or school districts.

FISCAL IMPACT STATEMENT

- No cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630.
- No cost or savings to any state agency.
- No other non-discretionary cost or savings imposed on local agencies.
- No cost or savings in federal funding to the state.

EFFECT ON HOUSING COSTS

The DJJ has made an initial determination that the proposed actions will have no significant affect on housing costs.

EFFECT ON BUSINESS

The DJJ has made an initial determination that the proposed actions will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACT ON AFFECTED PRIVATE PERSON OR BUSINESSES

The DJJ is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT

The DJJ has made an assessment that the proposed amendments to the regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

ALTERNATIVES CONSIDERED

The DJJ must determine that no reasonable alternative considered by the DJJ, or that has otherwise been identified and brought to the attention of the DJJ, would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory actions.

EFFECT ON SMALL BUSINESS

The DJJ has determined that the proposed amendments will not affect small businesses. This is due to the fact that the proposed amendments apply only to Correctional Peace Officers employed by the DJJ and youth under the jurisdiction of the DJJ.

CONTACT

Written comments and inquiries about the initial statement of reasons, proposed actions, or location of the rulemaking file should be directed to Sonja Dame, Division of Juvenile Justice, 4241 Williamsborough Drive, Sacramento, California, 95823, (916) 262-3178, FAX (916) 262-2608, E-mail: sdame@cya.ca.gov. Questions regarding the substance of the proposed regulations should be directed to Jeff Plunkett at (916) 262-1542.

In the event the contact persons are not available, inquiries may be directed to the following backup contact at the same address as noted above: Asami Dunahoo, (916) 262-1550.

INTERNET ACCESS

Materials regarding this proposed regulatory action can be accessed from the DJJ's website at http://www.coor.ca.gov/BudgetRegs/reg_action.html.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The DJJ has prepared and will make available the initial statement of reasons and the proposed text of the regulations. All documents pertaining to this regulatory action, including the express terms of this proposed action and all information on which the proposal is based, are available to the public upon request from the agency contact person indicated within this notice.

In addition, once completed, the final statement of reasons will be available upon request from the agency contact person indicated within this notice and posted at the above DJJ website.

Date

BERNARD WARNER
Chief Deputy Secretary
Division of Juvenile Justice